

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEVADA**

UNITED STATES OF AMERICA,

) 3:73-cv-00128-MMD-WGC

Plaintiff,

WALKER RIVER PAIUTE TRIBE,

Plaintiff-Intervenor,

**[PROPOSED] ORDER  
RELATING TO COMPLETION  
OF SERVICE**

V.

WALKER RIVER IRRIGATION DISTRICT,  
a corporation, et al.,

Defendants.

MINERAL COUNTY,

Plaintiff-Intervenor,

V.

WALKER RIVER IRRIGATION DISTRICT,  
et al.,

Defendants.

Mineral County is now ready to move forward with its final service efforts in this matter by personally serving those California riparian property owners in the Walker River Basin who have not previously waived personal service.

**THEREFORE, IT IS HEREBY ORDERED** as follows:

1. Based on previous Orders of the Court, Rule 4 service on Decreed water rights holders is complete, *see* Doc. 725, and the final list of California riparian property owners in the Walker River Basin to be served pursuant to Rule 4 submitted by Mineral County is hereby approved and is attached hereto as Attachment A. [ATTACHMENT A HAS NOT YET BEEN

1 FINALIZED. WHEN MINERAL COUNTY HAS FINALIZED ATTACHMENT A, THIS  
2 PROPOSED ORDER AND ITS ATTACHMENTS WILL BE RESUBMITTED TO THE  
3 COURT. MINERAL COUNTY EXPECTS TO FINALIZE ATTACHMENT A NO LATER  
4 THAN JULY 15, 2021].

5  
6 2. On or before December 31, 2021, Mineral County shall make service pursuant to  
7 Rule 4 of the Federal Rules of Civil Procedure of the following documents on all California  
8 riparian property owners in the Walker River Basin listed in Attachment A, who remain to be  
9 served:

- 10 a. Second Amended Complaint in Intervention (Doc. No. \_\_\_\_\_);  
11  
12 b. Notice in Lieu of Summons properly issued by the Clerk of the Court,  
13 attached hereto as Attachment B;  
14  
15 c. Notice of Appearance and Intent to Participate forms as follows:  
16 (i) Notice of Appearance and Intent to participate for Party Represented  
17 by Attorney, attached hereto as Attachment C;  
18 (ii) Notice of Appearance and Intent to Participate for Unrepresented  
19 Party Consenting to Electronic Service, attached hereto as Attachment D;  
20 (iii) Notice of Appearance and Intent to participate for Unrepresented  
21 Party Declaring Hardship Making Electronic Service Impossible, attached hereto as Attachment  
22 E;  
23  
24 d. Disclaimer of Interest in Water Rights and Notice of Related  
25 Information and Documentation Supporting Disclaimer form, attached hereto as Attachment  
26 F;  
27  
28 e. Joint Motion for Substitution of Parties Following Transfer of Interest  
form, attached hereto as Attachment G;

1 f. Statement Noting Death form, attached hereto as Attachment H; and

2 g. A copy of this Order.

3 3. Responses will be governed by the following provisions, which are included in the  
4 Notice in Lieu of Summons referenced in paragraph 2 of this Order, and attached hereto as  
5 Attachment B:

6 a. Responses to Mineral County's Second Amended Complaint in  
7 Intervention shall be filed and served as follows:

8 i. For Defendants who were served or who returned Waivers of  
9 Personal Service of Notice in Lieu of Summons forms prior to the entry of this Order, September  
10 28, 2021;

11 ii. For Defendants served after the entry of this Order, 90 days from the  
12 date on which the Defendant is served or signs a waiver of personal service pursuant to this Order;  
13 and  
14

15 b. Within thirty (30) days of service of the Notice in Lieu of Summons, the  
16 proposed defendant served shall file with the Court the applicable Notice of Appearance and Intent  
17 to Participate.

18 c. Persons, corporations, institutions, associations or other entities who, at the  
19 time of service, no longer own a water right subject to this litigation<sup>1</sup> must file the Disclaimer of  
20 Interest form referenced in paragraph 7 of this Order with the Court within thirty (30) days of  
21 service;  
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26 <sup>1</sup> Pursuant to Orders of this Court, (Doc Nos. 19 & 736) water rights that are subject to this  
27 proceeding include water rights under the Walker River Decree as well as existing and  
28 potential riparian water rights possessed by riparian land owners within the California portion  
of the Walker River Basin.

1           d.       Persons, corporations, institutions, associations or other entities who waive  
2 service or are served and who subsequently sell or otherwise transfer a water right that is the  
3 subject of this litigation may file with the Court a Joint Motion for Substitution referenced in  
4 paragraph 8 of this Order;

5  
6           e.       Representatives or heirs to persons who died after being served, and who  
7 owned a water right that is the subject of this litigation may file with the Court a Statement Noting  
8 Death referenced in paragraph 9 of this Order.

9           4.       If Mineral County intends to seek a waiver of personal service of the above  
10 documents, pursuant to the provisions of Fed. R. Civ. P. 4(d), Mineral County shall allow thirty  
11 (30) days for return of the waiver of personal service and shall include in the mailing to persons  
12 requested to waive service the documents listed in paragraph 2 of this Order, except for the Notice  
13 in Lieu of Summons described in paragraph 2(b) above.<sup>2</sup>

14  
15           In addition to the documents to be mailed, as listed in paragraph 2, the mailing to each such  
16 proposed defendant seeking the waiver of service shall also include a Notice of Lawsuit and  
17 Request for Waiver of Personal Service of the documents included in the said mailing and for  
18 waiver of personal service of summons generally in accordance with Form 5 of the Rules of Civil  
19 Procedure, but modified to cover service of the other documents included in the mailing. The  
20 Notice shall substantially conform to the Notice of Lawsuit and Request for Waiver of Personal  
21 Service of Notice in Lieu of Summons attached to this Order as Attachment I.

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23           In the event that Mineral County intends to seek a waiver of personal service as set forth  
24 above, it also shall include with the documents mailed to a proposed defendant from whom such a  
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26 <sup>2</sup> Mineral County has represented to the Court that while it does not intend to seek waivers  
27 from all defendants listed on Attachment A who remain to be served, there may be a limited  
28 number of defendants from whom Mineral County will seek a waiver as a result of difficulties  
associated with personal service.

1 waiver is sought a form of waiver generally in accordance with Form 6 of the Rules of Civil  
2 Procedure, but modified to cover waiver of service of summons and the other mailed documents  
3 as described above. The Waiver shall substantially conform to the Waiver of Personal Service of  
4 Notice in Lieu of Summons attached to this Order as Attachment J.

5  
6 5. At such time as all service required by this Order is complete, Mineral County shall  
7 file a statement to that effect, including documentation of waiver of personal service for those  
8 defendants listed on Attachment A who returned a signed Waiver of Personal Service of Notice in  
9 Lieu of Summons form in 2015.

10 6. Persons, corporations, institutions, associations or other entities who waive  
11 personal service or are personally served but who do not appear shall nevertheless be deemed to  
12 have notice of subsequent Orders of the Court.

13  
14 **7. Treatment of Defendants Who Transferred Their Interest(s) Prior to**  
15 **Service:**

16 Pursuant to the Court's September 6, 2011, *Amended Order Concerning Service Issues*  
17 *Pertaining to Defendants Who Have Been Served* (Doc. No. 542), if any person or entity  
18 receiving service by mail or personal service has no interest in any water right subject to this  
19 subproceeding,<sup>3</sup> that person or entity shall notify the Court in writing of that fact. If such a  
20 person or entity sold or otherwise conveyed ownership of *all* water rights subject to this  
21 subproceeding before being served or otherwise brought into the subproceeding, in addition to  
22 disclaiming any interest in this subproceeding, that person or entity shall include a notice  
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26 <sup>3</sup> Pursuant to Orders of this Court, (Doc Nos. 19 & 736) water rights that are subject to this  
27 proceeding include water rights under the Walker River Decree as well as existing and  
28 potential riparian water rights possessed by riparian land owners within the California portion  
of the Walker River Basin.

1 providing the same successor-in-interest information required to be included in a Motion for  
2 Substitution.

3         The form and substance of the Disclaimer and Notice shall substantially conform to  
4 the form attached to this Order as Attachment F and shall be sent to the Court for filing. Any  
5 person or entity who files a Disclaimer of Interest using the attached form or provides  
6 information for this purpose by other means is responsible for the accuracy of that filing.  
7 Consequently, any person or entity who files a Disclaimer of Interest of water rights subject to  
8 this litigation, but retains such water rights, shall nevertheless be bound by the results of this  
9 litigation.  
10

11         Following its receipt from any person or entity disclaiming any interest in any of the  
12 water rights at issue in this case, Mineral County will review the materials received, and, if  
13 appropriate, request that the Court dismiss that person or entity from this subproceeding.  
14

15         **8.         Treatment of Successors-in-Interest As a Result of an *Inter Vivos*<sup>4</sup>**  
16         **Transfer:**

17         Pursuant to the Court's September 6, 2011, *Amended Order Concerning Service Issues*  
18 *Pertaining to Defendants Who Have Been Served* (Doc. No. 542), where a defendant has been  
19 served in this subproceeding and subsequently sells or otherwise conveys a water right or  
20 portion of a water right subject to the subproceeding, the successor(s)-in-interest need not be  
21 re-served, but will be bound by the results of this litigation.  
22

23         Once a defendant has been served in this subproceeding, the burden of keeping track  
24 of *inter vivos* transfers of the defendant's water rights in the subproceeding and substituting  
25 the defendant's successors-in-interest properly is born by the defendant and its successor(s)-  
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27 <sup>4</sup> *Inter vivos* means among the living. Transfers that occur because a served defendant has  
28 died are addressed below.

1 in-interest. The action will continue in the name of the served defendant until such time as  
2 the served defendant and any successor(s)-in-interest file an agreement and motion seeking  
3 the substitution of the successor(s)-in-interest for the served defendant and the Court approves  
4 that substitution.

5         If a defendant who has been served in this subproceeding subsequently sells or  
6 otherwise conveys a water right or a portion of a water right subject to the subproceeding, that  
7 defendant and its successor(s)-in-interest may move for substitution pursuant to Fed. R. Civ.  
8 P. 25(c).

9         If the Court approves the substitution of a successor-in-interest for a served defendant  
10 in this subproceeding, the action will continue against the successor-in-interest, who will be  
11 treated as a served defendant for the pendency of the subproceeding and shall be bound by the  
12 requirements of this Order and all prior and subsequent Orders in this subproceeding. If a  
13 defendant who has been served in this subproceeding subsequently acquires additional water  
14 rights that are subject to the subproceeding, the prior service on the defendant shall be  
15 effective as to all water rights held by that defendant, including any rights acquired  
16 subsequent to service.

17         The Court has approved the attached form (Attachment G) for use by defendants and  
18 their successors-in-interest in this subproceeding, under the above circumstances. Attachment  
19 G sets forth a joint motion by which both the current defendant and its successor(s)-in-interest  
20 may identify the rights transferred and indicate their agreement that the successor(s)-in-  
21 interest be substituted into the applicable subproceeding for the water rights addressed. This  
22 form is not the exclusive means by which successors-in-interest may be substituted into this  
23 action.

1           **9.       Treatment of Successors-in-Interest As a Result of a Death:**

2           Pursuant to the Court's September 6, 2011, *Amended Order Concerning Service Issues*  
3 *Pertaining to Defendants Who Have Been Served* (Doc. No. 542), if a party dies during the  
4 course of this litigation, the court may order substitution of the proper party. A motion for  
5 substitution may be made by any party or by the decedent's successor or representative. If the  
6 motion is not made within ninety (90) days after service of a statement noting the death, the  
7 action by or against the decedent must be dismissed." Fed. R. Civ. P. 25(a)(1).

8  
9           If no such notice or suggestion of death is made on the record, the case may proceed to  
10 judgment with the original named parties. A Statement Noting Death must be filed in all  
11 subproceeding(s) of this case in which the decedent was a defendant, and service of the  
12 statement must identify the successor(s) to the estate who may be substituted for the decedent.  
13 A notice filed in one subproceeding shall not be construed as "service of a statement noting  
14 the death" in the other subproceeding for purposes of complying with the *Amended Order*  
15 *Concerning Service Issues Pertaining to Defendants Who Have Been Served* or FRCP 25(a).  
16

17           Should a death be formally noted on the record by service of a statement noting the  
18 death filed in this subproceeding, Mineral County, or any other party or the decedent's  
19 representative and/or successor(s)-in-interest shall move for substitution of the proper  
20 successor(s)-in-interest within ninety (90) days of such notice pursuant to Fed. R. Civ. P.  
21 25(a). The 90-day period may be extended pursuant to Rule 6(b), which provides the Court  
22 with the discretion to enlarge this period. Fed. R. Civ. P. 6(b).  
23

24           The form and substance of the Statement Noting Death shall substantially conform to  
25 the form attached to this Order as Attachment H and shall be filed with the Court for service  
26 upon the parties to this subproceeding.  
27  
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1 Absent service of a Statement Noting Death in this subproceeding, the case may  
2 proceed against the original named parties and will bind any and all successor(s)-in-interest.  
3 If a successor-in-interest already is a defendant in this subproceeding as a joint tenant or  
4 pursuant to other joint ownership of the right(s) owned by the decedent, no action is required  
5 and the subproceeding will continue against the successor-in-interest.  
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7 DATED: \_\_\_\_\_, 2021  
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10 UNITED STATES MAGISTRATE JUDGE  
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